

## **EXHIBIT 1**

### **INTRODUCTION**

From January 31, 2001 through July 27, 2001, Respondent Richard Ferreira was an energy consultant to the California Department of Water Resources (“DWR”), in the California Energy Resources Scheduling division (the CERS division). As a consultant for DWR, Respondent was prohibited by Government Code section 87100 of the Political Reform Act (the “Act”)<sup>1</sup> from making, participating in making, or using his official position to influence any governmental decision in which he had a financial interest.

In this matter, Respondent violated Section 87100 by making a recommendation on an energy contract in which he had a financial interest.

For the purposes of this Stipulation, Respondent’s violation is stated as follows:

On or about June 13, 2001, as a consultant to the California Department of Water Resources, Respondent Richard Ferreira participated in making a governmental decision in which he had a financial interest, by advising DWR to purchase energy from Calpine Energy Services, a company in which he had an investment interest of \$2,000 or more, in violation of Government Code section 87100.

### **SUMMARY OF THE LAW**

One of the findings on which the Act is based is that public officials, whether elected or appointed, should perform their duties in an impartial manner, free from bias caused by their own financial interests, or the financial interests of persons who have supported them. (Section 81001, subd. (b).) Therefore, one of the stated purposes of the Act is that the assets and income of public officials, which may be materially affected by their official actions, be disclosed, and in appropriate circumstances, that the officials disqualify themselves from acting, so that conflicts of interest may be avoided. (Section 81002, subd. (c).)

In order to prevent conflicts of interest, Section 87100 prohibits state and local public officials from making, participating in making, or using their official position to influence a governmental decision in which they know, or have reason to know, that they have a financial interest. Section 82048 defines a “public official” to include every member, officer, employee, or consultant of a state or local governmental agency. Regulation 18701, subdivision (a)(2)(B), defines a “consultant” as an individual who, pursuant to a contract with a state or local government agency, serves in a staff capacity

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<sup>1</sup> The Political Reform Act is contained in Government Code sections 81000 through 91014. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at Title 2, California Code of Regulations, sections 18109 through 18997. All regulatory references are to Title 2, Division 6, of the California Code of Regulations.

with the agency, and in that capacity, participates in making a governmental decision or performs the same or substantially all the same duties for the agency that would otherwise be performed by an individual holding a position specified in the agency's Conflict of Interest Code.

A public official "participates in making a governmental decision" when acting within the authority of his or her position, the official advises or makes recommendations to the decision maker either directly or without significant intervening substantive review, by: (1) conducting research or making any investigation which requires the exercise of judgment on the part of the official and the purpose of which is to influence a governmental decision; or (2) preparing or presenting any report, analysis, or opinion, orally, or in writing, which requires the exercise of judgment on the part of the official and the purpose of which is to influence a governmental decision. (Regulation 18702.2, subd. (b).)

Under Section 87103, subdivision (a), a public official has a financial interest in a decision, within the meaning of Section 87100, if it is reasonably foreseeable that the decision will have a material financial effect on a business entity in which the official has a direct or indirect investment worth \$2,000 or more.

Whether the reasonably foreseeable financial effect of a governmental decision is material depends upon the nature of the interest, whether the effect is direct or indirect, and if direct, the degree to which the economic interest is involved in the decision. Under Regulation 18704.1 subdivision (a), a business entity is directly involved in a governmental decision when that entity initiates the decision, or is a named party in, or the subject of the, decision.

If a business entity is directly involved in a governmental decision, the reasonably foreseeable financial effect of the decision on the business entity is presumed to be material, unless the public official's only economic interest in the business entity is an investment interest, and the investment is worth \$25,000 or less. (Regulation 18705.1, subd. (b).) If the \$25,000 investment interest exception applies, and the business entity is listed on the New York Stock Exchange, Regulation 18705.1, subdivision (c)(2) provides that the reasonably foreseeable financial effect of a governmental decision is material if the decision will result in an increase or decrease to the business entity's gross revenues for a fiscal year in the amount of \$500,000 or more.

The financial effect of a governmental decision is considered "reasonably foreseeable" if there is a substantially likelihood, and not just a mere possibility, that the effect will occur. (*In re Thorner* (1975) 1 FPPC Ops. 198.)

## **SUMMARY OF THE FACTS**

### **Respondent Was a Public Official as Defined by the Act**

On January 31, 2001, Respondent signed a two-year, \$500,000 personal service contract with DWR to provide consulting services. Among other things, as required by the contract, Respondent reviewed and made recommendations regarding energy contracts through which DWR procured energy for the state. By having a contractual obligation to participate in making governmental decision for a period of two years, Respondent qualified as a consultant under Regulation 18701, subdivision (a)(2)(B). As a consultant, Respondent was a public official as defined by Section 82048, and was therefore subject to the prohibition against conflicts of interests.

### **Respondent Participated in Making a Governmental Decision**

On June 14, 2001, DWR signed a three-year, \$150 million energy contract with Calpine Corporation (“Calpine”).<sup>2</sup> Under the agreement, Calpine agreed to provide 180 megawatts of peaking capacity and energy to the state from the summer of 2002 through April 2005.

Before signing the contract with Calpine, DWR had submitted the contract to a formal contract review process. Under the review process, the contract proposal was first submitted to, and negotiated by, a regional contract manager. The contract was then submitted to a contracts committee for final review and approval. On June 14, 2001, as a member of the contracts committee, Respondent, along with other members of the committee, signed a Contract Approval Cover Sheet recommending that DWR enter into a three-year contract with Calpine. The terms and conditions of the Calpine contract had been negotiated by regional contract manager Tim Haines. DWR Deputy Director Ray Hart reviewed the Calpine contract, and made the final decision to approve the contract.

By advising DWR to sign a three-year contract for the purchase of energy from Calpine, Respondent participated in making a governmental decision as defined by Regulation 18702.2.

### **Respondent Had an Economic Interest in Calpine Corporation**

Five months before joining DWR to work as an energy consultant, Respondent and his spouse acquired 50 shares of Calpine stock. Respondent held his investment interest in Calpine until July 19, 2001. On June 14, 2001, Respondent’s investment interest in Calpine stock was worth approximately \$4,400. By owning stock in Calpine worth \$2000 or more, Respondent had an economic interest in Calpine for the purposes of Section 87103, subdivision (a).

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<sup>2</sup> The shorthand reference to “Calpine” means the Calpine Corporation, and all of its business units, including Calpine Energy Services.

### Respondent's Economic Interest Was Directly Involved in the Decision

As a named party in to the contract signed by DWR on June 14, 2001, Calpine was “directly” involved in DWR’s decision to sign the contract. (Regulation 18704.1.)

### Applicable Materiality Standard

At the time of the decision, on June 14, 2001, Calpine was listed on the New York Stock Exchange and Respondent’s investment interest in Calpine was worth less than \$25,000. Thus, the applicable materiality standard was the “indirect” materiality standard in Regulation 18705.2, subdivision (b) for business entities that are publicly traded on the New York Stock Exchange. Under the applicable materiality standard in Regulation 18705.1, subdivision (b), a reasonably foreseeable effect of \$500,000 on the annual gross revenues of a business entity listed on the New York Stock Exchange is considered to be material, and may therefore constitute the basis for a conflict of interest.

### It Was Reasonably Foreseeable That the Applicable Materiality Standard Would Be Met

Under the terms of the contract between Calpine and DWR, DWR agreed to pay approximately \$150 million or more to Calpine for 180 megawatts of energy over a period of three years. Thus, it was reasonably foreseeable that DWR’s decision to sign the contract would have at least a \$500,000 effect on the annual gross revenues of Calpine.

As it was reasonably foreseeable that the decision to sign the \$150 million contract would have a material financial effect of \$500,000 or more on Calpine, Respondent was prohibited from participating in that decision. Accordingly, by advising DWR to sign the contract, Respondent participated in making a governmental decision in which he had a financial interest, in violation of Section 87100.

## **CONCLUSION**

This matter consists of one count of violating Section 87100, and carries a maximum administrative penalty of Five Thousand Dollars (\$5,000).

In mitigation, before participating in DWR’s decision to contract with Calpine, Respondent had disclosed his ownership interest in Calpine to DWR Deputy Director Ray Hart and DWR-CERS senior manager Viju Patel. Neither official advised Respondent that his interest in Calpine might create a conflict of interest. In July 2001, when DWR informed Respondent that his position fell within the definition of “consultant,” in Regulation 18701, subdivision (a)(2)(B), and that he was therefore a public official subject to the Act’s conflict of interest prohibition, Respondent immediately disposed of his interest in the Calpine stock.

In aggravation, the conduct of participating in a governmental decision in which an official has a financial interest is a serious violation of the Act. As a veteran public servant, having spent 23 years working for DWR, and 11 years working for the Sacramento Municipal Utility District, Respondent should have known of his obligation to avoid conflicts of interest.

Accordingly, the facts of this case justify the imposition of the maximum administrative penalty of \$5,000.